



**Office of the Attorney General
Robert E. Cooper, Jr.**

**Department of Commerce and Insurance
Commissioner Leslie Shechter Newman**

NEWS RELEASE

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FOR IMMEDIATE RELEASE

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**TENNESSEE SETTLES CONSUMER PROTECTION CLAIMS AGAINST EXPRESS
SCRIPTS INC.**

Tennessee has joined 29 other states in a settlement of consumer protection claims against Express Scripts Inc., one of the nation's largest pharmacy benefits management (PBM) companies, Attorney General Bob Cooper and Tennessee Division of Consumer Affairs Director Mary Clement announced today.

The multistate agreement calls for substantial changes in the way Express Scripts does business. Some of the terms of settlement prohibit Express Scripts from soliciting drug switches when the net cost of the proposed drug exceeds that of the originally prescribed drug or when the switch will cost the patient more or when the originally prescribed drug has a generic version but the proposed drug does not.

"We hope this case will lead to better practices and greater accountability within this segment of the health care industry," said Attorney General Cooper.

PBMs such as Express Scripts enter into contracts with employers and government health plans to process prescription drug claims for drugs provided to health plan enrollees. PBMs also negotiate with drug companies to obtain volume discounts; negotiate discounts with participating retail pharmacies to provide dispensing services at a discount; and dispense drugs to patients

through PBM-owned mail order pharmacies. In the thirty years since the first PBMs appeared, their services have evolved to include complex rebate programs, pharmacy networks, and drug utilization reviews.

The complaint alleges that Express Scripts engaged in deceptive business practices by encouraging doctors to switch patients to different brand name prescription drugs and representing that the patients and/or health plans would save money. Doctors were not adequately informed of the effect this switch would have on costs to patients and health plans. Moreover, Express Scripts may have engaged in or promoted some drug switches which resulted in additional medical costs to consumers.

Additional terms of the settlement require Express Scripts to pay the states \$9.3 million and to:

- *Inform patients and prescribers what effect a drug switch will have on a patient's co-payment;
- *Inform prescribers of Express Scripts' financial incentives for certain drug switches;
- *Inform prescribers of material differences in side effects or efficacy between prescribed drugs and proposed drugs;
- *Reimburse patients for out-of-pocket expenses for drug switch-related health care costs and notify patients and prescribers that such reimbursement is available;
- *Inform patients that they may decline a drug switch and the conditions for receiving the originally prescribed drug;
- *Monitor the effects of drug switches on the health of patients;

"We feel the guidelines established in the Express Scripts case and the other pharmaceutical cases are critical in protecting both consumers and physicians," stated Mary Clement, Director of the Division of Consumer Affairs.

To learn more about these cases, please visit "Cases of Interest" on the Attorney General's website at <http://www.tn.gov/attorneygeneral/>. To file a complaint about these or any other consumer matters, please contact the Division of Consumer Affairs at www.tennessee.gov/consumer/ or call (615)741-4737 or toll-free in Tennessee 1-800-342-8385. (615) 741-4737 or toll-free in Tennessee at 1-800- 342-8385.